IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 581 of 2000()

CRA.163/1997 of SESSIONS COURT, KASARAGOD
CC.766/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG
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REVN. PETITIONER: APPELLANT/ ACCUSED

P.G.VALSAN, S/O. GANGADHARAN,
AGED 33 YEARS, PUTHAMPARAMBIL,
KODOM BELURE PANCHAYAT.

BY ADV. SRI.T.P.VARGHESE
SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SRI.T.K.VIPINDAS
SMT.ACHU SUBHA ABRAHAM

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA REP.BY THE
EXCISE INSPECTOR, HOSDURG RANGE,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

CRL.MP. NO.3260/2000 IN CRL.RP. 581/2000

DISMISSED

07.09.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

tss

K.R.UDAYABHANU, J

Crl.R.P.No.581 of 2000

Dated this the 7th day of September, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 58 of the Abkari Act and sentenced to undergo R.I. for three months and to pay a fine of Rs.15,000/- and in default, to undergo R.I. for three months.

2. The prosecution allegation is that on 28.6.1996 at about 4.45 p.m. at Kanhangad Panathur public road (Mavungal) the accused was found in possession of 10 packets, containing 100 ml. each, of illicit arrack.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2, Exts. P1 to P3 and Mos' 1 to 3.

4. The evidence in support of the prosecution version consisted of the testimony of PW2, the Excise Inspector who detected the offence. PW1, the independent witness to the recovery and mahazar did not support the prosecution and was treated as hostile. The evidence of PW2 is to the effect that while he was conducting patrol duty at 4.45 p.m. and when he reached the Kanhangad Panathur public road the accused was found

carrying 10 packets of arrack in a blue coloured plastic cover. The writings of the arrack packets were in Kannada language. Two packets were opened, tasted and smelt and he found that the same is arrack. The accused was arrested and the contraband was taken into custody as per Ext. P1 mahazar in which the independent witnesses have attested. The arrack found in two packets were taken in a 375ml. bottle sealed and taken into custody. The sample forwarded for chemical analysis. Ext. P3 is the report of chemical analysis which shows that the sample contained 35.72% by volume of ethyl alcohol.

5. It is contended that the sample contained 200 ml. cannot be true as two packets were opened and tasted and the quantity cannot be 200 ml. as each packet contained only 100 ml. I find that the above contention was considered by the court below and discarded. There is no evidence to show that the detecting officer used considerable quantity to taste. There is nothing to show that the sample was measured at the laboratory. In the chemical analysis report the quantity of sample is mentioned as 200 ml. It is the evidence of PW2 that only some drops were taken and tasted. It is also contended that there is a

delay of 20 days in producing the sample before the court below. I find that the above contention is not raised before the court below. Ext. P2 report has reached in the court on 1.7.1996. The delay is only two days. I find that nothing has been brought out to disbelieve the version of PW2. In the circumstances, I find no reason to interfere in the concurrent findings of the courts below. The conviction is confirmed.

6. Counsel for the revision petitioner has pleaded for leniency pointing out that more than 10 years have elapsed since the commencement of the proceedings and that so far the accused was facing the ordeal of criminal proceedings. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for one month. The revision petitioner is granted three months' time to remit the fine amount. He shall appear before the Judicial First Class Magistrate Court-I, Hosdurg on 10.10.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl